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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,480	09/22/2003	Reinhold Schmieding	A8130.0028/P028-A	5525

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EXAMINER

PRONE, CHRISTOPHER D

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10, 11, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by International Application Publication WO 99/21515 Grooms.

In response to claims 10, 11, and 13-15 Grooms discloses the same invention being an implant shown in figure 2B comprising a blunt proximal end (202), a tapered distal end adapted to receive a suture (201), a transverse eye (210), and a cylindrical shaft (204). Grooms also teaches the use of channels formed on the opposite sides of the implant shown as the channels in figure 7D that may accommodate suture received in the eye of the implant.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 12 is rejected under 35 U.S.C. 103 as being unpatentable over Grooms in view of United States Patent 6,045,554 Grooms et al.

Grooms discloses the invention substantially as claimed being an implant described above. However, Grooms does not disclose that the implant is made of allograft or a synthetic bone material.

Grooms 554' teaches the use of an implant made of allograft or synthetic bone material (2:9-22) in the same field of endeavor for the purpose of providing an implant that is capable of fusing with the bone it is implanted into.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the allograft or synthetic bone materials taught by Grooms 554' with the implant of Grooms in order to provide an implant that has strength comparable to a metallic version, and has the advantage of leaving no residual hardware while contributing to bone stock.

Response to Arguments

Applicant's argues that the shaft of Grooms is not a solid with a cylindrical shape. However, the shaft shown in figure 2B of Grooms is clearly cylindrical. The drawing is only wavy to show the flexibility of the shaft, but it still maintains a cylindrical cross-section. The examiner does not agree with the applicant's argument that since it is flexible it is not solid. The flexibility of an object has no relevance to it being a solid. From the disclosure of Brooms it is clear that the shaft 203 is a solid. The applicant further argues that the surface of Brooms

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implant is not smooth, but as is clear from the figures there is clearly a portion of the shaft 203 that has a smooth outer surface.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

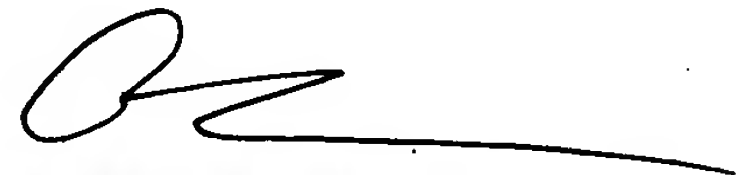
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CDP

Christopher D Prone
Examiner
Art Unit 3738



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